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FEB 8

CHARLES ELMORE

In the Supreme Court of the United States

OCTOBER TERM, 1931.

No. 426.

DAVID BURNET, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

CHARLES P. LEININGER.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

SUPPLEMENTAL BRIEF FOR RESPONDENT.

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Due to necessary haste in the preparation of respondent's brief the following statement was omitted from Part I thereof at p. 13.

The Petitioner, at pp. 10-11 of his brief, suggests an administrative difficulty in the application of our theory of the case and the decision of the court below, in that the respondent would, under section 218 of the law, be taxable on his share of the net income of the laundry company whether distributed or not, whereas if the income were distributed in the year when earned it would be taxed one-half to respondent and one-half to his wife. But this statement of the petitioner does not correctly interpret either the position of the respondent or the decision of the court below. As we have said, the respondent's wife (as to her share) would stand precisely in the shoes of the respondent. This would be so because, under the findings of fact, she was either

(a) A partner in the laundry company and therefore taxable under section 218 upon her share, whether distributed or not; or

(b) A partner in her husband's interest in an existing corpus and therefore taxable (likewise under section 218) upon the net income thereof whether distributed or not; or

(c) The Beneficiary of an irrevocable trust of which the respondent was the Trustee, in which event section 219 of the act would apply. That section provided:—

> "Sec. 219. (a) That the tax imposed by sections 210 and 211 shall apply to the income of estates or of any kind of property held in trust, including—
>
> (4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, * * * and in cases under paragraph (4) of subdivision (a) of this section the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.
>
> (d) In cases under paragraph (4) of subdivision (a) * * * *the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share, whether distributed or not*, of the net income of the estate or trust for the taxable year * * *."

A beneficiary of such an irrevocable trust, being treated under section 219 exactly as a partner under section 218, i.e., taxable on his or her share of net income whether distributed or not, no difficulty of the kind suggested by counsel could arise.

On the other hand, a very serious difficulty arises if we adopt the petitioner's position. For in that event the

respondent would be taxed under section 218 upon one-half of the net income of the laundry company, whether distributed or not, and his wife (either as a partner in his interest under section 218 or as beneficiary of a trust under section 219) would be taxed on her one-half of the respondent's share. For the income distributable to her was not a gift exempt from tax as such; her distributive share was predicated upon a contract supported by a legal consideration and, therefore, taxable to her. The same income, therefore, under the petitioner's theory would be taxed twice, a result scarcely to be tolerated where the things done and the applicable sections of the statute reasonably support the more equitable result of taxing the same income only once and then only to the equitable owner of the corpus from which it flowed.

Respectfully submitted,

IRWIN N. LOESER,

Counsel for Respondent.